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Supreme Court, U.S.
FILED

No. 07-120 JUL 28 2007

OFFICE OF THE CLERK

In The

Supreme Court of the United States

IVAN LAMBERT (pro se),

Petitioner,

v.

United States Department of State and
Michael Chertoff, Secretary of
Homeland Security

Respondents.

**On Petition For a Writ of Certiorari
To The United States Court of Appeals
For The Eight Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Until 1994, a child born abroad before noon (EST) May 24, 1934, to an alien mother and a U.S. citizen father who had resided in the United States prior to the child's birth could acquire citizenship, but a child born to an alien father and a U.S. citizen mother could not. Section 101(a) of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416 (1994) was intended to eliminate this disparity. It added §301(h) to the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1401(h), Providing that a child born before noon May 24, 1934 (EST) to an alien father and a U.S. citizen mother who had resided in the United States prior to the birth of the child acquired U.S. citizenship.

I. Does the retention of the residence requirements in 8 USC 1401 (h) violate extent Supreme Court decisions protecting the liberty, privacy and associational rights of parents to make decisions about their children's care, custody, control and companionship?

II. Is the retention of the residence requirements in 8USC 1401 (h) impermissibly retroactive?

III. Is the retention of the residence requirements in 8 USC 1401 (h) fundamentally unfair, absurd, unreasonable, arbitrary and unlawful?

IV. Did the lower courts err when it did not allow Mr. Lambert to join his children?

V. Did the lower courts err when it did not allow Mr. Lambert standing to assert his grandmother's equal protection claims and alternatively did the lower courts err when it did not allow him to join his Mother to support him in his standing to assert his grandmother's equal protection claims?

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
STATUTORY PROVISIONS INVOLVED	1
STATEMENT	2
REASONS FOR GRANTING THE PETITION	6
CONCLUSION	15

TABLE OF AUTHORITIES

Page

CASES

Chevron oil Co. v. Hudson, 404 US 97 (1971) 3
Chew Heong v. United States, 112 US 538 (1884) 2
Delgadillo v. Carmichael, 332 US 388 (1947) 2
Fernado-Vargas, (No. 04-1376 2006) 3
Fiallo v. Bell, 430 Us 787 (1977) 10
Griswold v. Connecticut, 381 U.S. 479 (1965) 7
Ginsburg v. New York, 390 U.S. 629 (1968) 9, 10, 14
Hogdson v. Minnesota, 479 US 450 (1990) 8
Meyer v. Nebraska, 262 U.S. 390 (1923) 2, 11, 13, 14
Miller v. Albright, 523 U.S. 433 (1998) 10, 11
Moore v. East Cleveland, 431 U.S. 494 (1977) 8, 10, 11
Moser v. United States, 341 US 41 (1951) 2
Nguyen v. INS, 533 U.S. 1 (2001) 9, 10
Nishikawa v. Dulles, 356 US 129 (1958) 2
Parham v. J.R., 442 U.S. 584 (1979) 9, 11
Pierce v. Society of Sisters, 268 U.S. 510 (1925) 11, 14
Prince v. Massachusetts, 321 U.S. 158, 166 (1944) 7
Roe v. Wade, 410 U.S. 113 (1973) 8
Roberts v. United States Jaycees, 468 U.S. 609 (1984) 7
Stanley v. Illinois, 405 U.S. 651 (1972) 8, 11
Stearns Co. v. US, 291 US 61 (1934) 3
Troxel v. Granville, 530 U.S. 57 (2000) 2, 7, 11, 13, 14
United States v. Wong Kim Ark, 169 U.S. 649 (1898) 12
Washington v. Glucksberg, 521 U.S. 702 (1997) 7, 10
Wisconsin v. Yoder, 406 U.S. 205 (1972) 10, 11, 15

TABLE OF AUTHORITIES — Continued

Page

UNITED STATES CONSTITUTION
First Amendment 7
Fifth Amendment 1, 7, 8
Ninth Amendment 7
Fourth Amendment 7

Federal register 3

OPINIONS BELOW

Plaintiff's claims arise under Constitutional Amendment V. The Federal District Court had Federal Question Jurisdiction pursuant to 28 USC 1331 and 2201 and supplemental jurisdiction under 5 USC 701 et seq. and 8 USC 1503. The appeal was taken from the Final Order of the District Court entered on February 28 2006, granting the defendant's motion to dismiss (Pet App. 1-5). A motion to alter and amend the judgment was filed March 7, 2006 by the Plaintiff and the Motion was denied on March 14, 2006 (Pet. App. 6-7). The Appeals Court had jurisdiction over Plaintiff's appeal under 28 USC 1291. Plaintiff's notice of appeal to the Eight Circuit Court was filed on March 27, 2006 and denied on March 28, 2007 in an unpublished decision (Pet. App.8-9). Plaintiff, petitioned for an en banc review on April 17, 2007. The petition for a rehearing enbanc and rehearing by the panel was denied on May 11, 2007 (Pet. App.11).

JURISDICTION

The jurisdiction of this court is invoked under 28 USC 1254 (1).

STATUTORY PROVISIONS INVOLVED

Until 1994 a child born abroad before noon (EST) May 24, 1934, to an alien mother and a U.S. citizen father who had resided in the United States prior to the child's birth could acquire citizenship, but a child born to an alien father and a U.S. citizen mother could not. Section 101(a) of the Immigration and Nationality Technical Corrections Act of 1994, Pub. L. No. 103-416 (1994) was intended to eliminate this disparity. It added §301(h) to The Immigration and Nationality Act ("INA"), 8

U.S.C. § 1401(h), providing that a child born before noon May 24, 1934 (EST) to an alien father and a U.S. citizen mother who had resided in the United States prior to the birth of the child acquired U.S. citizenship. Section 101(b) provided that a person claiming citizenship under the new law did not need to satisfy the residence or physical presence requirements for retaining citizenship that existed before October 10, 1978. Section 101(c) generally made sections 101(a) and 101(b) applicable retroactively. This language ensured that people qualifying for citizenship under the new law would not immediately lose it for failure to reside in or be physically present in the United States. However, section 101(d) explicitly declined to extend this exemption to the residence or physical presence requirements for *transmitting* citizenship.

STATEMENT

This case is whether the Federal Government can constitutionally retain the residence requirements in 8 USC 1401 (h). The impossibility of performing these requirements violate not only the cherished values inherent in the Supreme Court decisions from ***Meyer*** to ***Troxel***, but also Supreme Court decisions dealing with notions of fairness in federal immigration matters (Ex: ***Chew Heong v. United States***, 112 US 538 (1884) [The supposition should not be indulged that Congress ...intended to make its protection depend upon the performance of conditions which was physically impossible to perform.]. ***Moser v. United States***, 341 US 41 (1951) [Petitioner did not knowingly and intelligently waive his rights to citizenship, considering all the circumstances of this case elementary fairness would require nothing less then an intelligent waiver]. ***Delgadillo v. Carmichael***, 332 US 388 (1947) [residence or physical presence in the US shall not be lost through legal or physical compulsion] and ***Nishikawa v. Dulles***, 356 US 129 (1958) [US Citizenship shall not be lost or forfeited involuntarily].

Since there was no possible way Mr. Lambert could of known he was a citizen before 1994, the law cannot now demand that he should of known of his duties and obligations to his children and therefore has forever waived his right to make decisions regarding his children's citizenship (all means available for ensuring his children's citizenship, not just transmission). Mr. Lambert did not knowingly and intentionally waive his fundamental rights and therefore should not now be barred, from claiming fundamental rights which all Americans cherish and enjoy. The court in ***Chevron oil Co. v. Hudson***, 404 US 97 (1971) looking at the unfairness of a superseding decision describes Mr. Lambert's predicament and legal support for the relief he requests:

> We should not indulge that the law now announced has always law, therefore that those who did not avail themselves of it waived their rights (***Griffin v. Illinois***, 351 US 12)....To hold that respondent's lawsuit is retroactively time barred would be anomalous indeed.... It would produce the most "substantial inequitable result" to hold that the respondent slept on his rights at a time where he could not of known the time limitation the law imposed on him.

To hold, that Mr. Lambert's fundamental rights to make decisions about his children's citizenship is now time barred would be equally "anomalous" and "substantially inequitable". (***cf Stearns Co. v. US*** 291 US 61 (1934). The law was intended to remedy an equal protection violation and its application does very little to achieve that end. The unfairness in 8 USC 1401 (h) is manifest and cannot be justified by the government's plenary powers in immigration. Second, what are in effect impermissible retroactive requirements (even though retained), violate the intent of Congress which was to ensure that "all women receive equal treatment under the laws relating to nationality" (Federal Register July 25 1995 Vol. 62 p. 39926, 39927); ***Fernando –Vargas***

(04-1376), 2006 [burdens imposed on completed acts which can't be undone]

Mr. Lambert was born abroad, in Canada January 1954, to two American parents who were also born abroad: father Canada Sept 5, 1926; mother Canada May 26, 1924. In the fall of 1998 Mr. Lambert realized that both his parents had a claim to U.S. citizenship through their American born parents. He made a preliminary application to the U.S. Consulate in Calgary, Canada. In the spring of 1999, Mr. Lambert's mother received her passport (8 U.S.C. 1401 (h)). In the summer of 1999 Mr. Lambert (8 U.S.C. 1401 (c) see Plaintiff's Memo. exhibit p. 1) and his father (Section 1993 of the Revised Statutes of 1874) received their passports.

Mr. Lambert applied for a certificate of birth abroad on October 1999 for his daughter from the Consulate in Calgary, Alberta. The application was denied November 29, 1999 since according to there calculations he did not have enough physical presence to transmit his citizenship to her under the laws at the time of her birth (see Plaintiff's Memo. exhibit p.2). On July 2000 Mr. Lambert applied for an adjustment of status for his son and it was denied just before his 21st birthday (November 21, 2001 Plaintiff's Memo exhibit p. (11-12-13) because Mr. Lambert was not deemed to be domiciled in the U.S. On appeal to the immigration court Mr. Lambert asked the immigration court to withdraw his application since he believed that his son had a claim to U. S. citizenship (Plaintiff's Memo. exhibit p.13)

On May 21, 2001 Mr. Lambert submitted an N 600 to have his daughter expeditiously naturalized under section 322 of the INA (8 USC 1433) (Plaintiff's Memo. exhibit p.3). There was no word from the INS until February 7, 2002 (Plaintiff's Memo. exhibit p.4) stating that she did not qualify since her father had not "lived" in the U.S. Mr. Lambert replied stating that Mr. McKay the inspector at the port of entry Pembina ND had misunderstood the law and had prejudiced the timely

adjudication of his daughter's application (Plaintiff's Memo. exhibit p.5). The Department of Homeland Security did not respond until December 30, 2002 stating that his daughter had aged out before her application was adjudicated (Plaintiff's Memo. exhibit p.6). In their denial they stated that she could qualify for birth abroad under 1401 (g) and they would process her N600 if Mr. Lambert sent additional evidence supporting his physical presence in the U.S. Mr. Lambert stated that as far as he knew he could not transmit his citizenship since he did not have the required physical presence in the U.S. before his daughter's birth. He asked the Agency if they could retroactively approve the N 600 under section 322 since he felt that was the only option left to him (Plaintiff's Memo. exhibit p.7). He later realized that the Attorney general or the Agency were not authorized to approve applications "nunc pro tunc". He then asked if they could approve her application under 8 USC 1401 (g) as they had suggested in their letter (December 30 2002, Plaintiff's Memo. exhibit p.6) providing that they construct, for equitable and constitutional reasons, the remaining physical presence needed to transmit his citizenship to his daughter (Plaintiff's Memo. exhibit p.8-15). On September 17, 2004 Mr. Lambert received correspondence from the Department of Homeland Security denying his daughter's application under Section 322 (Plaintiff's Memo. exhibit p.10).

On November 23, 2004 Ivan Lambert (pro se) filed this case against the Department of Sate in the United States District Court for the District of North Dakota alleging that his substantive due process and equal protection rights were violated by 8 USC 1401(h). Mr. Lambert subsequently amended his complaint to add the Michael Chertoff, Secretary Department Of Homeland Security with additional claims. The Federal Government filed a motion to dismiss, asserting that Mr. Lambert lacked standing, that the court did not have subject matter jurisdiction, and plaintiff failed to state a claim upon which relief can be given. On February 28, 2006 the District Court denied the plaintiff's

summary judgment motion and granted the Federal Government motion to dismiss.

On March 7, 2006 Mr. Lambert filed a motion to alter or amend and add his children as plaintiffs (pro se). On March 15 2006 the District Court denied the motion to alter and amend and the motion to join his children.

Mr. Lambert petitioned the Eight Circuit Court to consider his claim that he and all US parents have a constitutional freedom to decide their children's citizenship and that the retention of the residence requirements in 8 USC 1401 (h) unconstitutionally interferes with this interest. Also, in this new light, Mr. Lambert requested that the Eight Circuit complete a more exacting scrutiny of the other claims he made to the District Court (1) that 8 USC 1401 (h) is impermissibly retroactive, 2) that it denies his grandmother's equal protection and that he has standing to raise her claims, and alternatively his mother should have been joined to support him in his standing 3) that 8 USC 1401 (h) is unreasonable, arbitrary, absurd, and unlawful, and 4) that his children should have been joined to preserve their day in court 5) and his procedural due process claims in his amended complaint.

REASONS FOR GRANTING THE PETITION

I. **THE EIGHT CIRCUIT COURT OF APPEALS BY AFFIRMING THE DISTRICT COURT'S DISMISSAL OF MR. LAMBERT'S CLAIMS HAS RENDERED A DECISION UPON A FEDERAL QUESTION THAT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT AND OTHER FEDERAL COURTS OF APPEAL**

II. **THE EIGHT CIRCUIT COURT OF APPEALS BY**

AFFIRMING THE DISTRICT COURT'S DISMISSAL OF MR. LAMBERT'S CLAIMS HAS RENDERED A DECISION THAT CONFLICTS WITH 84 YEARS OF EXTENT SUPREME COURT PRECEDENT RECOGNIZING AND PROTECTING PARENTS SUBSTANTIVE RIGHTS AND FREEDOMS TO MAKE DECISIONS CONCERNING THEIR CHILDREN'S CARE, CONTROL AND COMPANIONSHIP.

8 USC 1401 (h) violated Mr. Lambert's fundamental right as a parent to make free, knowing and intelligent decisions about his children's citizenship. The District court's dismissal of Mr. Lambert's claims and the Eight Circuit Court of Appeal's affirmance contravened extant Supreme Court decisions recognizing and respecting the parent's freedom to make decisions concerning the rearing and upbringing of children (***Troxel v. Granville***, 530 U.S. 57 (2000) ["In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, control of their children"].

Few ideas are more entrenched in our constitutional jurisprudence than the notion that parents are presumptively entitled to make decisions about the best interests of their children. The right to parental liberty, autonomy and freedom in child rearing and family decisions is protected by the First, Fifth, Ninth and Fourteenth Amendment (***Washington v. Glucksberg***, 521 U.S. 702 (1997); ***Roberts v. United States Jaycees***, 468 U.S. 609 (1984); ***Griswold v. Connecticut***, 381 U.S. 479 (1965). The Supreme Court has repeatedly held that the custody care and nurture of the child reside first with the parent, whose primary function and freedom include preparations for obligations the state can neither supply or hinder (***Prince v. Massachusetts***, 321 U.S. 158, 166 (1944).

The family is the core element upon which upon which modern civilization is founded. A parent's constitutionally protected right to rear his or her children without state interference, has been recognized as a fundamental liberty interest protected by the Fifth Amendment and also as fundamental right derived from the privacy rights inherent in the constitution. Where a fundamental right is involved, state interference is justified only if the state can show that it has a compelling interest and such interference is narrowly drawn to meet only the compelling state interest involved (***Roe v. Wade***, 410 U.S. 113 (1973); ***Moore v. East Cleveland***, 431 U.S. 494 (1977); ***Hogdson v. Minnesota***, 479 US 450 (1990) [When the government intrudes on the family choices, the governmental interests advanced and the extent to which they are served by the challenged regulation must be carefully examined].

One need look no further then the constitutional reference point of extant tradition as articulated by the Supreme Court's cases over the past eighty years, to determine that the parent-child relationship is constitutionally protected and the state can interfere in that relationship, only in the service of a "powerful countervailing interest" (***Stanley v. Illinois***, 405 U.S. 651 (1972). In ***Stanley*** the Supreme Court addressed the most drastic form of state interference –termination of the parent-child relationship. The court characterized the constitutional interest in the parent-child relationship as "essential" and "one of the basic civil rights of man". The Court continued to define this protected interest as "that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. It is plain that the interest of a parent in the companionship, care, custody and management of his children comes to this court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements".

The constitutionally protected decisions a parent makes in the life of his child as he or she is growing up is legion and diverse. However, it is critical that the parent concerns himself with the decisions that will affect his children's citizenship. If the parent fails in this regard (like ***Nguyen*** . ***INS***, 533 U.S. 1 (2001), or is prevented in this regard (like Mr. Lambert), they may be separated by the state at a later date. The United States provides parents with many avenues to fulfill this critical responsibility (***Ginsburg v. New York***, 390 US 629 (1968). The US citizen parent can provide for his children's citizenship by ensuring that there born in the US. If the parents or grandparents have failed to provide for the requirements of transmission, they can avail themselves of statutory provisions that allow for expedited naturalization, like 8 USC 1433.

Essentially, Mr. Lambert could not off found out he was a US citizen before 1994. 8 USC 1401 (h) retroactively recognized Mr. Lambert (in 1994) as a US citizen since his birth in 1954; therefore he was unconstitutionally denied all avenues that could provide for his children's US citizenship. At that point, there was no way for Mr. Lambert or his Mother to comply with the physical presence requirements needed for him to transmit his citizenship to his children, or no way for him to decide if they would be born in the US. The traditional presumption is if Mr. Lambert had known he was a US citizen since his birth, his children would be US citizens today (***Parham v. J.R.***, 442 U.S. 584 (1979) [the traditional presumption is that fit parents act in the best interest of their children].

Therefore, Mr. Lambert's claims do not only deal with the transmission of citizenship, but more importantly, **with the parents' freedom to make critical decisions about all the means available for ensuring their children will be US citizens**. The Supreme Court has been explicit in this regard; it will not allow any state interference or hindrance with parental duties and

obligations that prepare the child for citizenship (***Wisconsin v. Yoder***, 406 U.S. 205 (1972); ***Ginsburg v. New York***, 390 U.S. 629 (1968) ["Constitutional interpretation has consistently recognized that the parents' claim to authority in the rearing of their children is basic in our society, and the legislature could properly conclude that those primarily responsible for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility"]. It is painfully obvious that 8USC 1401 (h) was not designed to support Mr. Lambert in his responsibilities to prepare his children for citizenship.

The District Court suggested that since Mr. Lambert's children were not US citizens ***Moore v. East Cleveland***, supra could not be used as legal support for his substantive due process claims. Mr. Lambert appealed to the Eight Circuit court, urging that the District Court erred when it ignored the principle articulated in the Supreme Court decisions of ***Nguyen v. INS***, 533 U.S. 1 (2001) and ***Miller v. Albright***, 523 U.S. 433 (1998) that the primary question was, whether Mr. Lambert's children are in fact US citizens ("a predicate for the application of deference commanded by ***Fiallo*** is that individuals concerned are aliens. But whether that predicate obtains is the very matter in this case"). Whether the predicate obtains in Mr. Lambert's case was also at issue, but the District Court ignored the step affirmed by the Supreme Court in matters of citizenship conferral. Plaintiff, also pleaded with the appeals court to use the analysis in ***Washington v. Glucksberg***, 521 U.S. 702 (1997) to determine if his claims are in fact fundamental (the clause protects those rights and liberties which are objectively, deeply rooted in our nation's history and traditions).

Mr. Lambert argued that his freedom to make decisions about his children's citizenship ranked as high, as the other parental decisions the Supreme Court has protected over the last 80 years. These have included the parent's freedom to make choices about

the type of schools the children would attend, and the type of classes taught (***Meyer v. Nebraska***, 262 U.S. 390 (1923); ***Pierce v. Society of Sisters***, 268 U.S. 510 (1925); ***Wisconsin v. Yoder***, 406 U.S. 205 (1972), the freedom to make choices about family composition (***Moore v. East Cleveland***, 431 US 494 (1977); ***Stanley v. Illinois***, 405 U.S. 651 (1972) the freedom to make choices about the child's health (***Parham v. J.R.***, 442 U.S. 584 (1979) and the freedom to make choices about who the child would associate with (***Troxel v. Granville***, 530 U.S. 57 (2000).

Mr. Lambert argued that the parent's freedom to make decisions about his children's smaller or larger community was as fundamental as any of the decisions aforementioned and that the decisions about the child's community had ancient roots that predated American and British laws. He quoted ***Justice Breyer*** in his thoughtful analysis in ***Miller v. Albright***, 523 U.S. 433 (1998) where he described how our transmission laws from the 17th to 20th century reflected and protected parent's decisions to secure their children's community:

> This case is about American citizenship and its transmission from an American parent to his child. The right of citizenship, as this Court has said, is "a most precious right." ***Kennedy v. Mendoza-Martinez***, 372 U. S. 144, 159 (1963); see also ***Fedorenko v. United States***, 449 U. S. 490, 507 (1981) (citizenship is a "priceless treasure") (internal quotation marks omitted); ***Luria v. United States***, 231 U. S. 9, 22 (1913) ("Citizenship is membership in a political society"); ***Afroyim v. Rusk***, 387 U. S. 253, 268 (1967) ("[This Nation's] citizenry is the country and the country is its citizenry").
>
> Further, the tie of parent to child is a special one, which in other circumstances by itself has warranted special constitutional protection. See, e.g., ***Wisconsin v. Yoder***, 406 U. S. 205 (1972); ***Pierce v. Society of***

Sisters, 268 U. S. 510 (1925); ***Meyer v. Nebraska***, 262 U. S.390 (1923); see also ***Skinner v. Oklahoma ex rel. Williamson***, 316 U. S. 535 (1942).

Moreover, American statutory law has consistently recognized the rights of American parents to transmit their citizenship to their children. See Act of Mar. 26, 1790, §1 1 Stat. 103; Act of Jan. 29, 1795, §3, 1 Stat. 415; Act of Apr. 14, 1802, §4, 2 Stat. 155; Act of Feb. 10, 1855, §1, 10 Stat. 604; Rev. Stat. §1993; Act of Mar. 2, 1907, §6, 34 Stat. 1229; Act of May 24, 1934, §1, 48 Stat. 797; Nationality Act of 1940, §201(g), 54 Stat. 1139; Immigration and Nationality Act of 1952, §301(a)(7), (b), 66 Stat. 235, 236, as amended, 8 U. S. C. §1401; cf., e.g., 1 Oppenheim's International Law §384 (R. Jennings & A. Watts 9th ed. 1992) (noting that in many States, children born abroad of nationals become nationals); 43 A. Berger, Encyclopedic Dictionary of Roman Law 389 (1953) (Roman citizenship was acquired principally by parentage); Sandifer, A Comparative Study of Laws Relating to Nationality at Birth and to Loss of Nationality, 29 Am. J. Int'l L. 248, 248–261, 278 (1935) (discussing citizenship laws throughout the world and noting the "widespread extent of the rule of jus sanguinis"); E. de Vattel, The Law of Nations 101–102 (J. Chitty trans., 1883) (1758).

He also quoted ***United States v. Wong Kim Ark***, 169 US 649 (1898) where the Supreme Court scrutinized the earliest British laws for children born abroad:

By reason of the plague in England, no act was passed upon the subject until Edw III (1350), when parliament passed an act "A statute for those who are born in parts beyond the sea" by which after reciting

Some people be in doubt, if children born in the parts

> beyond the sea, out of the ligeance of England, should be able to demand the same ligeance from, or not, a petition was put in the Parliament Edw III and as not as the same time wholly assented, it agreed and affirmed That the law of the Crown of England is, and always has been such that the children of the Kings of England, in whatever parts they be born in England or elsewhere, be able and ought to bear the inheritance after the death of there ancestors....

As one can imagine, a historical anthology of the natural parent's decisions to ensure his children's citizenship cannot be complete, since these decisions would certainly antedate recorded history. The parental decisions about the children's community are as ancient and sacred as the decisions about the children's health, education and associations.

Justice Souter's admonition in ***Troxel v. Granville***, 530 U.S. 57 (2000) is on point when he said:

> Our cases, it is true, have not set out exact metes and bounds to the protected interest of a parent in the relationship with his child, but ***Meyer's*** repeatedly recognized right of upbringing would be a sham if it failed to encompass the right to be free of judicially compelled visitation by "any party" at "any time" a judge believed he "could make a 'better' decision" than the objecting parent had done. The strength of a parent's interest in controlling a child's associates is as obvious as the influence of personal associations on the development of the child's social and moral character. Whether for good or for ill, adults not only influence but may indoctrinate children, and a choice about a child's social companions is not essentially different from the designation of the adults who will influence the child in school.

If a parent's right and freedom to make choices about his children's citizenship is not encompassed as a "protected interest of a parent in the relationship with his child" then ***Justice Souter's*** caution is again relevant.

Therefore Mr. Lambert's freedom to make decisions about his children's citizenship is fundamental. 8 USC 1401 h does not survive strict scrutiny since it is not narrowly tailored to serve a legitimate state interest (***Troxel v. Granville***, 530 U.S. 57 (2000) ***Justice Thomas*** in his concurrence).

Moreover, the Constitutional interests advanced by Mr. Lambert affect not only the rights of US parents who are domiciled abroad, but the fundamental rights of all US parents. For 80 years, the Supreme Court has protected the decisions of US parents. Only the government's interest in protecting children has usurped this freedom. Ironically, in this case, the government's interest is hurting children and families, and the means are not rationally related to the intent of congress (the means are actually hostile to congresses purpose to give equal protection to American women who gave birth abroad before 1934) (***Meyer v. Nebraska***, 262 U.S. 390 (1923); ***Pierce v. Society of Sisters***, 268 U.S. 510(1925) ["we are constrained to conclude that the statute as applied is arbitrary and without reasonable relation to any end within the competency of the state"].

This aberration should be a concern to all US parents since this is a direct and substantial encroachment on a constitutionally protected liberty, privacy, and associational interest between a natural parent and his children, and the government has not posited any reasons (***Meyer v. Nebraska***, 262 U.S. 390 (1923) ["But the means adopted, we think, exceed the limitations upon the power of the state and conflict with rights assured to plaintiff in error. The interference is plain enough and no adequate reason therefor in time of peace and domestic tranquility has been shown"]. In Mr. Lambert's case, the interference is plain

enough, and the means adopted are impermissibly retroactive and patently absurd. Moreover, the retention of the physical presence requirements voids the remedial intent of Public law 103-416 and in the process violates 84 years of Supreme Court precedent.

CONCLUSION

Accordingly there is no valid reason to delay consideration of this case, in which extent Supreme Court precedent is disregarded by the lower courts and no adequate reasons are given. For these reasons, Petitioner respectfully prays that this Court grants its Writ of Certiorari.

Respectfully submitted,

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TABLE OF CONTENTS

Page

District Court's Judgment (February 28, 2006) . . . . . App. 1

District Court's Memorandum Opinions and —Order on Motions (February 27, 2007). . . . . App. 2

District Courts Order Denying Motion to —Alter or Amend (March 14, 2006) . . . . . App. 6

Eight Circuit Court of Appeals Opinion —(March 28, 2007) . . . . . App. 8

Eight Circuit Court Order Denying Rehearing En Banc and Rehearing by the Panel (March 11, 2007). . . . App. 11

App. 1

Case 2:04-cv-00140-RRE-KKK Document 29 Filed 02/28/2006

AO 450 (Rev 5/85) Judgment in a Civil Case

United States District Court
District of North Dakota – Northeastern Division

JUDGMENT IN A CIVIL CASE

Case Number: 2:04-cv-140

Ivan Lambert

v.

United States Department of State and
Michael Chertoff, Secretary of
Department of Homeland Security

IT IS ORDERED AND ADJUDGED pursuant to the Memorandum Opinion and Order on Motions denying plaintiff's motion for summary judgment and granting defendant's motion to dismiss, the above-entitled case is **DISMISSED**.

February 28, 2006
Date

EDWARD J. KLECKER
Clerk

/s/ Lisa Clark
By Deputy Clerk – Lisa Clark

Case 2:04-cv-00140-RRE-KKK Document 28 Filed 02/27/2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

Ivan Lambert, Plaintiff, vs. United States Department of State and Michael Chertoff, Secretary of Department of Homeland Security, Defendants.	)	**MEMORANDUM OPINION AND ORDER ON MOTIONS** Civil File No. 2:04-cv-140

Before the Court is Plaintiff's Motion for Summary Judgement and Defendant's Motion to Dismiss. Both parties have submitted briefs on the motions. Based upon the arguments of the parties and the applicable law, the Court issues the following opinion:

SUMMARY OF DECISION

The majority of Plaintiff's claims relate to hypothetical injuries that occurred to other people, so he does not have standing. For the remaining issues, Plaintiff has failed to state a claim upon which relief can be granted.

FACTUAL BACKGROUND

The plaintiff, Ivan Lambert, is a United States citizen who married a German national in Canada in 1979. On November 26, 1980, Plaintiff's wife gave birth to a son, Jeremiah, in Canada. On May 2, 1984, Plaintiff's wife gave birth to a daughter, Kyla,

in Canada.

The law in effect at the time of Kyla's birth allowed a United States citizen to transmit citizenship to his children who are born abroad to an alien mother so long as the citizen had lived at least ten years in the United States prior to the child's birth. 8 U.S.C. § 1401(g) (1985). Prior to Kyla's birth, Plaintiff had only lived in the United States for approximately nine years. Based on this fact, Kyla's application for citizenship was denied.

In 2000, Jeremiah applied for permanent resident status in the United States. Since his father did not have a residence in the United States, he could not qualify as a sponsor for Jeremiah. On this basis, the Immigration and Naturalization Service denied Jeremiah's application.

Following the denials of his children's applications, Plaintiff filed this lawsuit. He seeks to have both his children recognized as United States citizens.

ANALYSIS

A court may dismiss a claim when it lacks matter jurisdiction over that claim. Fed. R. Civ. P. 12(b)(1). A party invoking federal jurisdiction must establish that he has met the requirements of both constitutional and prudential standing. Delorme v. United States, 354 F.3d 810, 815 (8th Cir 2004). Constitutional standing has three requirements. Id. The first requirement is that the plaintiff has suffered an injury in fact which in actual, concrete, and particularized. Id. The second requirement is a casual connection between the conduct complained of and the injury. Id. Finally, the plaintiff must demonstrate that the injury will be redressed by a favorable decision. Id.

At its core, Plaintiff's lawsuit is a complaint that his children do not meet the automatic citizenship requirements of 8 U.S.C § 1401. As such, any injury would accrue to his children because, under Plaintiff's reasoning, they were denied citizenship based upon the state of the law at their births. Since Plaintiff has not

suffered these injuries, he lacks standing to assert any claims based on these "denials."

Construing Plaintiff's complaint liberally, that leaves two claims where the alleged injury would be suffered by him personally. However, these two claims can be dismissed under the Rule 12 (b)(6) standard of failure to state a claim upon which relief can be granted.

Plaintiff's first claim is that he has been denied his fundamental right to be in the United States with his family. This argument resembles a substantive due process claim. The Fifth Amendment's guarantee of "due process of law" contains a substantive component that forbids the government from infringing upon "fundamental" liberty interests unless the infringement is narrowly tailored to serve a compelling state interest. Reno v. Flores, 507 U.S. 292, 301-02 (1993). Therefore, if no fundamental liberty interest is affected, the substantive component of the Fifth Amendment is not triggered. Id.

A "'[s]ubstantive due process' analysis must begin with a careful description of the asserted right, for '[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field. '" Id. at 302 (quoting Collins v. Harker Heights, 503 U.S 115, 125 (1992)). Plaintiff is asking this Court to recognize a fundamental right for non-citizen relatives to live in the United States with him. Regarding family living arrangements, the Supreme Court has recognized a fundamental right of relatives to live together in one house. Moore v. City of East Cleveland, 431 U.S. 494, 506 (1977). However, those relatives were all citizens of the United States. The right Plaintiff asks this Court to invent would conflict with Congress' constitutional power to regulate the granting of citizenship. See Rogers v. Bellei, 401 U.S. 815, 830 (1971) (discussing Congress' right to regulate naturalization and to limit the right to transmit citizenship by descent). Since

Plaintiff's argument finds no support in the law, and it would amount to an end run around Congress' power to regulate the granting of citizenship, Plaintiff's substantive due process claim fails.

Plaintiff's other claim is that he was not notified in 1994 that the law changed to grant him automatic citizenship. Plaintiff alleges that he did not find out about this change until 1998. This argument resembles a procedural due process claim to notice.

When a legislative body passes a statute, there is no constitutional requirement that everyone affected by the new legislation receive notice of its enactment. Bi-Metallic Inv. Co. v. State Bd. of Equalization, 239 U.S. 441, 445 (1915). Since the change to the citizenship laws in 1994 was general legislation, Plaintiff had no right to receive notice.

DECISION

Plaintiff's Motion for Summary Judgment is **DENIED**. Defendant's Motion to Dismiss is

GRANTED.

IT IS SO ORDERED.

Dated this 27th day of February, 2006.

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court

Case 2:04-cv-00140-RRE-KKK Document 32 Filed 03/14/2006

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHEASTERN DIVISION

Ivan Lambert, Plaintiff, vs. United States Department of State and Michael Chertoff, Secretary of Department of Homeland Security, Defendants.	)	**ORDER DENYING MOTION TO ALTER OR AMEND** Civil File No. 2:04-cv-140

Before the Court is Plaintiff's Motion to Alter or Amend the Judgment and his motion to Amend the Complaint. A motion pursuant to Rule 59(e) of the Federal Rules of Civil Procedure is limited to correcting "'manifest errors of law or fact or to present newly discovered evidence.'" Innovative Home Health Care, Inc. v.P.T.-O.T. Assocs. of the Black Hills, 141 F.3d 1284, 1286 (8th Cir. 1998). Plaintiff's arguments are the same ones that the Court considered and rejected in the original order. Since there are no manifest errors of law, Plaintiff's Motion to Alter or Amend is **DENIED**.

Plaintiff also seeks to amend his complaint to add his adult children as plaintiffs. Since this case is dismissed, the motion is moot. Even if the motion had been timely made, the motion to amend would be denied as futile. Plaintiff is representing himself pro se. A pro se litigant may not represent the cause of another person. Pridgen v. Andresen, 113 F.3d 391, 393 (2d Cir. 1997).

Therefore, the motion to amend the complaint is **DENIED**.

IT IS SO ORDERED

Dated this 14th day of March, 2006.

/s/ Ralph R. Erickson
Ralph R. Erickson, District Judge
United States District Court

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 06-1975

Ivan Lambert, Appellant, vs. United States Department of State and Michael Chertoff, Secretary of Department of Homeland Security, Appellees.	Appeal from the United States District court for the District of North Dakota. [UNPUBLISHED]

Submitted: March 7, 2007
Filed: March 28, 2007

Before SMITH, GRUENDER, and SHEPHERD, Circuit Judges.

PER CURIAM.

Ivan Lambert appeals the district court's[1] dismissal of his complaint seeking to have his adult children declared United States citizens. The Complaint was dismissed for lack of standing and failure to state a claim on which relief may be granted. Upon careful de novo review, we affirm. See Am. Ass'n of Orthodontists v. Yellow Book USA, Inc., 434 F.3d 1100, 1101 (8th Cir. 2006) (de novo review of dismissal for lack of standing); Breedlove v. Earthgrains Baking Cos., Inc., 140 F .3d 797, 799 (8th Cir. 1998) (de novo review of dismissal for failure to state a claim).

Lambert is a Canadian-born naturalized United States citizen who resides in Canada. He has two children born in Canada

in 1980 and 1984 to him and his wife, a German national. He was unable to transmit his United States citizenship to his adult children because he did not have ten years of physical presence in the United States prior to their births, as required by the law in effect when his children were born. See 8 U.S.C § 1401 (g) (1985) (establishing ten-year presence requirement).

The district court properly concluded that Lambert lacked standing to pursue his children's claims to citizenship, as he made no showing that his children were unable to assert their own interests. See Gladstone Realtors v. Vill. Of Bellwood, 441 U.S. 91, 99-100 (1979) (prudential limits on standing "limit access to the federal courts to litigants best suited to assert a particular claim"). Lambert's claim that the denial of citizenship to his children violates his right to reside with them in the United States fails to state a claim on which relief can be granted. See Rogers v. Bellei, 401 U.S. 815, 831, 836 (1971) (statutory limitations on citizenship will be upheld unless they are "unreasonable, arbitrary, or unlawful"). Lambert's challenge to 8 U.S.C. § 1401(h) also lacks legal support, whether it is construed as asserting a right to notice of the statute's enactment, cf. Emergency Disaster Loan Ass'n, Inc. v. Block, 653 F.2d 1267, 1271 (9th Cir. 1981) (government is not generally obligated to inform citizens of their eligibility for benefits), or as a challenge to its retroactive nature, see Landgraf v. USI Film Prods., 511 U.S. 244, 280 (1994) (courts only scrutinize whether retroactive application "would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed").

Finally, the district court did not abuse its discretion in denying Lambert's motion to amend the complaint, as the motion was filed after judgment has already been entered. See Niagara of Wis. Paper Corp v. Paper Indus. Union-Mgmt. Pension Fund, 800 F.2d 742, 749 (8th Cir. 1986) (motions for leave

to amend made post-judgment are not liberally granted and are reviewed for abuse of discretion).

The judgment of the district court is affirmed. See 8th Cir. R. 47B.

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[1]The Honorable Ralph R. Erickson, United States District Judge for the District of North Dakota.

UNITED STATES COURT OF APPEALS
FOR EIGHTH CIRCUIT

No: 06-1975

Ivan Lambert,

Appellant

v.

United States Department of State and Michael Chertoff, SECRETARY OF DEPARTMENT OF HOMELAND SECURITY,

Appellees

Appeal from District of North Dakota – Fargo
(2:04-cv-140-RRE-KKK)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

May 11, 2007

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

71 (2)

No. 07-120

IN THE

SUPREME COURT OF THE UNITED STATES

Ivan Lambert (pro se),

Petitioner,

v.

United States Department of State and
Michael Chertoff, Secretary of
Homeland Security

Respondents.

**On Petition For a Writ of Certiorari
To The United States Court of Appeals
For The Eight Circuit**

PETITION FOR REHEARING

Ivan Lambert
Box 49
Lancaster, Minnesota
56735
204-346-4566

TABLE OF CONTENTS

Page

REASONS FOR PETITION FOR REHEARING 1
CONCLUSION 4
APPENDEX 1 WILL 5
CERTIFICATE 7

REASONS FOR PETITION FOR REHEARING

My mother died unexpectedly on August 13, 2007. One of her wishes was that all her mother's heirs have a choice to claim US citizenship (she had asked to join or intervene at the appeals level but the Appeals court was silent on this issue). As executor to her estate (App. 1), it is my right and responsibility to continue to press these claims on her behalf and my grandmother's behalf (It is my family tradition that the two oldest siblings in the family act as executors to their parents estate; my mother was also executor to her parents' estate). In ***Hodel v. Irving***, 481 U.S. 704 (1987) heirs to the deceased were allowed standing to assert the claim of taking of property without just compensation against the Federal government ("At common law, a decedent's surviving claims were prosecuted by the executor or administrator of the estate"). In my grandmother's case, the right of descent at stake is far more precious (See ***May v. Anderson***, 345 U.S. 528 (1953) "rights far more precious then property rights" and ***Federenko v. United States***, 449 U.S. 490 (1981) "citizenship is a priceless treasure").

One of the claims I made to the District Court was that 8 USC 1401 h violates my grandmother's equal protection rights guaranteed under the 5th amendment and that I have standing to assert these claims. The District court disagreed, and described these injuries as "hypothetical and it happened to someone else a long time ago". The District court's analysis does not square with similar cases dealing with 8 USC 1401 h and its predecessor Section 1993 of the Revised Statutes of 1874 (***Elias v. United States Department of State***, 721 F. Supp 243 (N.D.

Cal. 1989); ***Aguayo v. Christopher***, 865 F. Supp. 479 (N.D. Ill 1994); ***Wauchope v. State Department***, 985 F. 2nd 1407 (9th Cir. 1993) ***Breyer v. Meissner***, 214 F. 3rd 422 (3rd Cir. 2000)). For these courts "hypothetical or that it happened to someone else a long time ago" were not impediments to looking at the merits of each respective case. The Appeals court makes no mention of my grandmother's injuries in its disposition, except that the District court did not abuse its discretion in denying the joining of my children. Therefore it is assumed that it affirmed the District Court's dismissal on these grounds. The Appeals Court decision comes not only into direct conflict with the 9th and the 3rd circuit, but also the Supreme court in ***Miller v. Albright***, 523 U.S. 420 (1998). In ***Miller v. Albright***, supra, petitioner was allowed to stand for her father's equal protection rights even though his only impediment to challenging 1409 was the dismissal he had received from the lower court. In both ***Miller v. Albright***, supra and later ***Nguyen v. INS***, 533 U.S. 1 (2001) heightened scrutiny was used, since 1409 was alleged to discriminate against men in their ability to transmit to their children born out of wedlock.

The claim that I made to the District court was that 8 USC 1401 h continues to discriminate like its predecessor (Section 1993), based on my grandmothers gender, since the retention of the physical presence requirements continues to deny transmission of her citizenship to all her heirs.

My standing on behalf of my grandmother, and the merits of my case garners support from the 3rd Circuit and the 9th Circuit where both courts allowed standing for children of deceased US mothers to challenge the predecessor of 8 USC 1401 h (Section 1993) and 8 USC 1401

(2). ***Wauchope***, supra employed a rational basis review and ***Breyer***, supra employed a heightened review fashioned after ***Miller***. Both cases found that Section 1993 and 8 USC 1401 (2) violated the guarantee of equal protection for American women whose children were born before 1934 ("The 1994 amendment does not then "completely and irrevocably eradicate the effects" of the discrimination against mothers contained in Section 1993)

Finally, the Appeals Court's decision is in tension with extent Supreme Court precedent allowing standing to those who had been injured, who have a close relationship to the third party, and the third party cannot assert their own rights (See ***Pierce v. Society of Sisters***, 268 U.S. 510 (1925); ***Griswold v. Connecticut***, 381 U.S. 479 (1965); ***Singleton V. Wulff***, 428 U.S. 106 (19796); ***Hodel v. Irving***, 481 U.S. 704 ((1987) and ***Campbell v. Louisiana***, 523 U.S. 392 (1998)

CONCLUSION

My mother's death and attending obligations has highlighted for me that my grandmother's equal protection claims have been arbitrarily ignored by the lower courts. My case should be decided on all its merits, therefore I plead with this court to grant a Writ of Certiorari and allow me standing to press her equal protection claims as her legal representative.

Respectfully submitted

Ivan Lambert
Box 49
Lancaster, Mn.
204-346-4566

Appendix 1

Will

I Lucille Maurice of the City of Winnipeg, Manitoba do hereby revoke all former wills made by me and declare this to be my last Will. I give and bequeath to my six children Ivan, JoAnn, Marc, Donald, Carole, Mona all of my estate comprised of:

a) revenues from the sale of my house and car
b) all monies in my account no.519835 at the Caisse Populaire in St Boniface
c) all monies from my RIFS, after payment of taxes, also at the caisse populaire

Further to this, I wish all my personal belongings be disposed of in the following manner

a) all objects given to me as gifts be returned to the donor
b) that everyone in the family including spouses and grandchildren receive some object that is meaningful to him or her, as a reminder of me.
c) That the rest of my belongings be shared in a fair and equitable.

I appoint Ivan Lambert and JoAnn Prociw as executors of this last will.

In witness whereof I have hereunto set my hand this 9th day February 2002

Lucille Maurice
249 Bertrand St. St Boniface

Signature of witness G Ewart
73 Sonning Bay 204 253 6822

Signature of witness Anna Labelle
323 ave, Wavell 204 284 1621

CERTIFICATE

I swear and affirm under the laws of the United States that I have submitted this petition in good faith because of intervening circumstances which are substantial and controlling.

Ivan Lambert
Box 49
Lancaster Mn.
56735
204-346-4566